

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability  
company, ) CASE NO. 3:17-cv-05760-BHS  
)  
Plaintiff, ) **PLAINTIFF’S RESPONSE IN**  
) **OPPOSITION TO DEFENDANTS’**  
) **MOTION TO COMPEL**  
)  
vs. )  
)  
KEVIN SYKES-BONNETT and SYKED) **NOTING DATE: SEPTEMBER 7, 2018**  
ECU TUNING INCORPORATED, a)  
Washington corporation, and JOHN)  
MARTINSON, )  
  
Defendants.

Plaintiff, HP TUNERS, LLC (“HPT” or “Plaintiff”), for its response in opposition to Defendants’ Motion to Compel, states as follows:

**INTRODUCTION AND BACKGROUND**

Consistent with Defendants’ approach to this litigation from the outset, once again, Defendants have misstated and misrepresented facts to this Court.<sup>1</sup> Here, specifically,

<sup>1</sup> Defendants also misstate the nature of the underlying arbitration against Matthew Honeycutt as that action did not involve allegations of alleged hacking. Rather, Mr. Honeycutt was a former employee who unlawfully sold certain confidential and proprietary information of HPT while he was an employee of HPT. The arbitration did not involve alleged hacking of HPT’s software and the claims against Defendants herein are separate, independent and distinct from the claims which had been asserted against Mr. Honeycutt.

1 Defendants are misrepresenting the nature of the agreement reached concerning the production  
2 of documents from the Matthew Honeycutt arbitration.

3 Contrary to Defendants' claims, in connection with the agreement concerning the  
4 production of limited information relating to the Matthew Honeycutt arbitration, Plaintiff never  
5 agreed to produce the exhibits to the pleadings. Instead, Plaintiff only agreed to produce various  
6 pleadings in order for Defendants to understand the nature of the action against Mr. Honeycutt  
7 and the matters at issue therein.

8  
9 In particular, as demonstrated by Exhibit C to the Motion to Compel (Dkt. 76-3), HPT  
10 agreed to "produce the following pleadings: Demand for Arbitration, Answering Statement (if  
11 any), briefing related to Respondent's Rule 27 Dispositive Motion and the Arbitrator's Order  
12 granting Respondent's Rule 27 Dispositive Motion." Additionally, HPT agreed to produce the  
13 briefs in connection with a motion for TRO which had been filed in that action. Nowhere did  
14 Plaintiff agree to produce the exhibits to such pleadings and Defendants' representations to the  
15 contrary are without merit. As detailed herein, the exhibits are not relevant to any party's claim  
16 or defense and are not proportional to the needs of the case in accordance with FRCP 26(b)(1).

17 Consistent with the agreement reached, HPT has produced all of the pleadings in  
18 connection with the Matthew Honeycutt arbitration. Now, Defendants' demands for the exhibits  
19 to various pleadings are inconsistent with the agreement reached as such exhibits are not relevant  
20 to any of the claims or defenses asserted in this matter and have no bearing of the issues alleged  
21 herein. This is even more true now in light of Defendants' various admissions to the possession,  
22 use and misappropriation of HPT's confidential and proprietary information. As counsel for  
23 Defendants admitted at the recent hearing on HPT's Renewed Emergency Motion for Temporary  
24 Restraining Order regarding Defendants' use, possession and misappropriation of HPT's  
25

1 confidential and proprietary information and concealment of same, “Kevin Sykes-Bonnett did  
2 something bad.” The claims and proceedings against Matthew Honeycutt are irrelevant to the  
3 claims asserted against Defendants and Defendants’ misconduct herein.

4 Defendants cannot articulate any basis or need for the underlying exhibits as the  
5 pleadings detail the nature of the action and the matters at issue therein. For the reasons set forth  
6 herein, Defendants’ motion should be denied.

### 7 ARGUMENT

8  
9 As detailed in Plaintiff’s Renewed Emergency Motion for Temporary Restraining Order  
10 and Reply Brief submitted in further support, Defendants have admitted to possessing, using and  
11 misappropriating HPT’s confidential and proprietary information. Consequently, the claims and  
12 allegations asserted against a former employee of HPT are not relevant to the claims and asserted  
13 against Defendants herein. Mr. Honeycutt’s misconduct in connection with his employment has  
14 no bearing on the claims or defenses asserted against Defendants herein. Consequently, the  
15 exhibits to the pleadings sought by Defendants should not be compelled.

16 Here, consistent with the agreement reached by the parties, HPT produced various  
17 pleadings associated with the Matthew Honeycutt arbitration. Contrary to Defendants’  
18 contentions, HPT did not agree to produce the exhibits to such pleadings as they have no bearing  
19 or relevance to the claims and defenses asserted herein.

20 Pursuant to FRCP 26(b)(1), the discovery sought by Defendants – the exhibits to various  
21 pleadings – is not relevant to any party’s claim or defense and is not proportional to the needs of  
22 the case considering the importance of the issues at stake in the action, the amount in  
23 controversy, the parties’ relative access to relevant information, the parties’ resources, the  
24  
25

1 importance of the discovery in resolving the issues, and whether the burden or expense of the  
2 proposed discovery outweighs its likely benefit. (*See* FRCP 26(b)(1)).

3 To date, Defendants failed to set forth a sufficient evidentiary nexus between the  
4 discovery sought and a good faith basis to believe that such discovery material is both relevant  
5 and proportional to the needs of the case. *See Gonzalez v. Allied Concrete Ind. Inc.*, 2016 U.S.  
6 Dist. LEXIS 4444789 (E.D.N.Y. Aug. 23,2016). In fact, Defendants have failed to articulate  
7 how or why the exhibits sought are relevant and proportional to the needs of the case in any  
8 regard whatsoever. In actuality, the exhibits to the pleadings from the Matthew Honeycutt  
9 arbitration which Defendants are seeking in connection with this motion to compel are irrelevant  
10 and immaterial to resolving the issues in this matter relating to Defendants' possession, use and  
11 misappropriation of HPT's confidential and proprietary information or Defendants' defenses to  
12 such claims.  
13

14 In addition, the issues relating to Matthew Honeycutt's misappropriation of HPT's  
15 confidential and proprietary information have no bearing or relation to Defendants' possession,  
16 use and misappropriation of HPT's confidential and proprietary information, which have been  
17 **admitted**. Therefore, the request is not proportional to the needs of the case because the exhibits  
18 sought is not important to the present action, has no bearing on the claims asserted against  
19 Defendants or the Defendants' defenses to such claims and the information is of marginal  
20 importance to any such claims and defenses at best.  
21

22 The discovery sought is not important in resolving the issues in this action – namely,  
23 whether Defendants' possessed, used or misappropriated HPT's confidential and proprietary  
24 information. Here, Defendants are already in possession of the pleadings associated with the  
25 Matthew Honeycutt arbitration, which demonstrate what the legal issues were in connection with

1 that action. Defendants have not articulated (and cannot articulate) any need or basis for the  
2 production of the exhibits to such pleadings as such exhibits are irrelevant and immaterial to the  
3 matters at issue herein. For these reasons, Plaintiff should not be compelled to produce the  
4 exhibits to such pleadings and the motion to compel should be denied.

5 WHEREFORE, Plaintiff, HP TUNERS, LLC, respectfully prays for an order denying  
6 Defendants' Motion to Compel and for such other and further relief as this Court deems  
7 necessary and appropriate.  
8

9  
10 Dated this 4th day of September, 2018

Respectfully submitted,

11 s/ Andrew P. Bleiman

12 Attorneys for HP Tuners, LLC

13 Stephen G. Leatham, WSBA #15572  
14 Heurlin, Potter, Jahn, Leatham & Holtmann, P.S.  
15 PO Box 611  
16 211 E. McLoughlin Boulevard  
Vancouver, WA 98666-0611  
Telephone: (360) 750-7547  
Fax: (360) 750-7548  
E-mail: [sgl@hpl-law.com](mailto:sgl@hpl-law.com)

17 Andrew P. Bleiman (admitted *pro hac vice*)  
18 Marks & Klein  
19 1363 Shermer Road, Suite 318  
Northbrook, Illinois 60062  
20 (312) 206-5162  
[andrew@marksklein.com](mailto:andrew@marksklein.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on September 4, 2018, I caused the foregoing to be electronically with the Clerk of Court using the **CM/ECF system** which will electronically send Notice to all Counsel of Record.

MARKS & KLEIN

s/ Andrew P. Bleiman  
Andrew P. Bleiman (admitted *pro hac vice*)  
1363 Shermer Road, Suite 318  
Northbrook, Illinois 60062  
Telephone: (312) 206-5162  
E-mail: [andrew@marksklein.com](mailto:andrew@marksklein.com)  
Attorney for Plaintiff